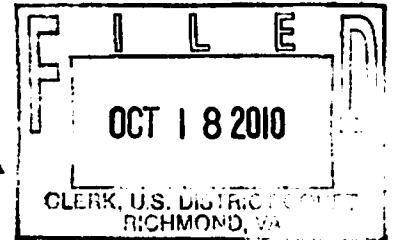


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



GARY BUTERRA WILLIAMS,

Plaintiff,

v.

Civil Action No. 3:10CV598

MASKELONY, *et al.*,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, submitted this action and requested leave to proceed *in forma pauperis*. Plaintiff has at least three actions or appeals that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted. *See e.g., Williams v. Vliet*, 3:05cv621 (E.D. Va. June 8, 2006); *Williams v. Cavedo*, 3:05cv842 (E.D. Va. Feb. 23, 2006); *Williams v. City of Richmond*, 3:04cv747 (E.D. Va. Aug. 17, 2005). Accordingly, by Order entered on September 9, 2010, the Court denied Plaintiff leave to proceed *in forma pauperis* and ordered him to pay the full filing fee within eleven (11) days. 28 U.S.C. § 1915(g).

On September 17, 2010, the Court received Plaintiff's reply to the Order of September 9, 2010. Plaintiff contends that he is unable to pay the filing fee, but that it should be waived because "his life is in danger." (Pl. Resp. 1.) An incantation of those words does not suffice to invoke such an exception. The prisoner must face imminent injury at the time the complaint is filed. *See, e.g., Abdul-Akbar v. McKelvie*, 239 F.3d 307, 311 (3d Cir. 2001). Plaintiff spends the bulk of his complaint alleging past injuries. The only claim that may be considered "imminent" is that of diarrhea after eating prison food. (Compl. 8–9.) Such claim, however, is not "serious physical injury." 28 U.S.C. § 1915(g). Thus, even if this Court credits Plaintiff's complaint, it

does not satisfy the “threshold criterion of § 1915(g).” *Gibbs v. Roman*, 116 F.3d 83, 86 (3d Cir. 1997) (overruled on other grounds). “An inmate must make ‘specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury.’” *Bea v. Robinette*, No. 7:10-cv-373, 2010 WL 3395691, at *1 (W.D. Va. Aug. 27, 2010) (citing *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003)). Plaintiff’s vague allegations that he fears reprisal at the hands of Defendants do not satisfy this standard.

Plaintiff is not entitled to proceed *in forma pauperis*, and he has failed to pay the full filing fee. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order will accompany this Memorandum Opinion.

It is so ORDERED.

/s/
Richard L. Williams
United States District Judge

Date: **OCT 18 2010**
Richmond, Virginia